

## Finance related Procedural Law

1 Within finance related procedural law are the Civil Preservation Act, the Code of Civil Procedure, the Civil Execution Act and insolvency law (the Bankruptcy Act, the Civil Rehabilitation Act, the Corporate Rehabilitation Act and provisions on special liquidation procedures in the Companies Act). In the Civil Code, which is Japan's general private law, there are areas which seek the smooth satisfaction of money claims through mortgages, joint guarantee obligations and the right of setoff and these procedures have the function of effectively establishing and realizing these rights in line with the intent of the Civil Code.

2 The Civil Preservation Act is a law which, by adopting provisional relief simply and promptly, aims to prevent risks arising due to delays in the realization of rights through the establishment of rights based on the decision of a meritorious lawsuit and through compulsory execution.

In the Civil Preservation Act three classes of provisional dispositions are prescribed: (1) in order to preserve the money claims of a compulsory execution, provisional attachment to take measures to limit the disposition of the assets of the obligor, (2) in order to preserve a property delivery and surrender claim of a compulsory execution, provisional disposition relating to the disputed property to take measures to maintain the current condition of that property, and (3) provisional disposition to prescribe provisional status to take measures to prescribe provisional conditions until the determination of a judgment concerning the merits of rights involved.

The Civil Preservation Act prescribes, firstly, general provisions as general procedural principles. Secondly, the Act prescribes the procedures for the issuance of preservation orders per the above noted classifications and procedures for appeals. Thirdly, the Act prescribes the execution procedures of issued preservation orders. Fourthly, the Act prescribes the effect regarding provisional dispositions where there has been, in particular, a dispute over interpretation. Fifthly, the Act establishes penal provisions.

Civil preservation procedures have, compared to court proceedings, the following special characteristics. Firstly, they are procedures scheduled to follow meritorious court proceedings and have an ancillary nature to the court proceedings. Also, because the

requirement for speed, summary procedures are adopted and preservation orders may be issued without going through oral arguments, and prima facie evidence of the rights to be preserved or the legal relations and the necessity of preservation is held to be sufficient. Furthermore, the preservation disposition is provisional up to the determination and realization of rights based on meritorious court proceedings.

3 The Code of Civil Procedure is a law prescribing the procedural format to conceptually establish (formation / disposition) rights under certain substantive law applied by the courts. Along with preventing the arbitrary exercise of jurisdiction, the Code grants on equal terms to both parties competence in the lawsuit and, based on such guarantees, seeks the fairness and appropriateness of courts, and regulates procedures by law with the intention of securing the faith of citizens with respect to the court.

The Code of Civil Procedure firstly establishes general provision and provides for the courts, parties, court expenses, court proceedings, the processing of the collection of evidence prior to the filing of a claim, etc. and applications through electronic data processing. Secondly, as the court proceedings of the first instance, the Code prescribes special provisions relating to actions, proceedings organization, oral arguments and those preparations, evidence, judgments, the completion of a suit without a hearing, large-scale lawsuits, etc. as well as special provisions concerning the court proceedings of small claims court. Thirdly, the Code prescribes matters relating to appeals. Fourthly, the Code prescribes matters relating to retrials. Fifthly, the Code prescribes special provisions on actions on bills and notes and actions on checks. Sixthly, the Code prescribes special provisions on actions on small claims. Seventhly, the Code prescribes demand procedures. Eighthly, the Code prescribes matters relating a stay of execution.

4 The Civil Execution Act is a procedural law which has as its primary objective the pursuit of the prompt and definite recovery of invested capital by compulsorily undertaking, which is the exclusive possession of state power, the realization of rights established through court proceedings and the exercise of security interests, etc. in respect to the assets of individual obligors.

The Civil Execution Act stipulates four types of civil execution which provides for: (1) the compulsory execution carried out based on individual titles of obligations in order to compulsorily satisfy a claim, (2) security interests based on mortgages, pledges or statutory liens are compulsorily converted into money through the compulsorily auction

of the subject assets and the execution of security seeking the satisfaction of a secured claim, (3) formal compulsorily auctions (this includes compulsorily auctions based on possession liens and compulsorily auctions for conversion into money based on the prescriptions in the Civil Code, Commercial Code and other laws) which do not have as a direct object the realization of a claim, and (4) disclosures of assets when the court issues an order to an obligor to disclose assets. Although these are fundamentally not the same and there are procedurally a number of differences, in any event these are anticipated by the Civil Code and are a state function which is realized when demanded and share in common the point of compulsorily disposition by state power.

The Civil Execution Act establishes, firstly, general provisions as general procedural principles. Secondly, the Act prescribes, as compulsory execution, monetary execution procedures with the objective of satisfying a money claim and non-monetary execution procedures with the objective of satisfying other claims. Thirdly, the Act prescribes security execution procedures, but the monetary execution procedures are often applied *mutatis mutandis*. With respect to formal compulsory auctions, cases of compulsory auction shall be applied as security execution. Fourthly, the Act prescribes matters relating to asset disclosure procedures. Fifthly, the Act prescribes penal provisions.

In the Civil Execution Act, there is a requirement to simultaneously give consideration to the prompt and certain realization of the rights of rights holders, the protection of obligors, the protection of third parties, the reconciliation of the interests between rights holders and the protection of social interests. The Civil Execution Act, by drawing a sharp line between court organs and the execution organs, seeks the prompt and certain realization of the rights of rights holders. Additionally, the Act protects the minimum life of obligors through statutory asset seizure-prohibitions and, with respect to unjust executions and illegal executions, the Act provides for relief procedures such as actions to oppose execution, appeals against a disposition of execution, objections to execution, etc. and seeks to appropriately give relief to obligors and to the rights of third parties. Furthermore, in the reconciliation of the interests among rights holders, equality is maintained and, notwithstanding whether there has been an attachment of the subject assets, the Act prescribes equal distribution in accordance with the class and type of right held by each rights holder who participates in the proceedings. In addition, the Act protects buildings broadly recognizing the formation of statutory rights and prescribes that a standard sales price be determined so as not to have a negative impact on the real estate market due to the sale of assets which are the subject of an execution.

5 In cases where the obligor is economically bankrupt, the Bankruptcy Act, the Civil Rehabilitation Act, the Corporate Rehabilitation Act and provisions on special liquidation procedures in the Companies Act prescribe judicial procedures to collectively process those debt relations.

The Bankruptcy Act and provisions on special liquidation procedures in the Companies Act both prescribe liquidation type insolvency procedures. The Bankruptcy Act is applied to natural persons and judicial persons and the provisions on special liquidation procedures in the Companies Act are applied only to a company in liquidation. The Civil Rehabilitation Act and the Corporate Rehabilitation Act are both rehabilitation type insolvency procedures. The Civil Rehabilitation Act is applied to natural persons and judicial persons and the Corporate Rehabilitation Act is applied only to stock companies.